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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBIN G. BRODIE,) Case No. CV 12-07690 DDP (AGRx)
)
Plaintiff,) ORDER GRANTING PLAINTIFF'S MOTION
) FOR LEAVE TO AMEND
v.) [Docket No. 24]
)
BOARD OF TRUSTEES OF THE)
CALIFORNIA STATE UNIVERSITY,)
TERRI HOPSON,)
)
Defendants.)
)
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)
)

I. Background

On September 7, 2013, Plaintiff Robin G. Brodie ("Plaintiff") sued the Board of Trustees of the California State University ("CSU") and Terri Hopson. (See generally Compl., Docket No. 1.) On December 7, 2012, this Court dismissed CSU as a party. (Docket No. 18.) On February 25, 2013, this Court issued a scheduling order that stated July 15, 2013 was the "last day to join other parties and to amend the pleadings." (Docket No. 23 at 2.) On July 15, 2013, Plaintiff filed her Motion for Leave to File Amended Complaint ("Motion"). (Docket No. 24.)

1 **II. Legal Standard**

2 After a scheduling order has been entered, pursuant to Federal
3 Rule of Civil Procedure 16, it can be modified only for "good
4 cause." Fed. R. Civ. P. 16(b)(4). "Rule 16(b)'s 'good cause'
5 standard primarily considers the diligence of the party seeking the
6 amendment." Johnson v. Mammoth Recreations, Inc., 975 F.2d 604,
7 609 (9th Cir. 1992). "The district court may modify the pretrial
8 schedule if it cannot reasonably be met despite the diligence of
9 the party seeking the extension." Id. (internal quotation marks
10 and citations omitted). "Although the existence or degree of
11 prejudice to the party opposing the modification might supply
12 additional reasons to deny a motion, the focus of the inquiry is
13 upon the moving party's reasons for seeking modification." Id.

14 **III. Analysis**

15 Defendants argue that Plaintiff's Motion should be denied
16 because she failed to meet and confer before filing this Motion
17 pursuant to Local Rule 7-3 and because she has not shown good
18 cause. The Court disagrees.

19 Local Rule 7-3 states: "[C]ounsel contemplating the filing of
20 any motion shall first contact opposing counsel to discuss
21 thoroughly, preferably in person, the substance of the contemplated
22 motion and any potential resolution. The conference shall take
23 place at least seven (7) days prior to the filing of the motion."
24 However, CSU does not argue that Plaintiff's violation of Rule 7-3
25 caused it prejudice. Because CSU "suffered no real prejudice . . .
26 the court elects to consider the motion on the merits." Reed v.
27 Sandstone Properties, L.P., No. CV 12-05021 MMM VBKX, 2013 WL
28 1344912 (C.D. Cal. Apr. 2, 2013).

1 Regarding the merits of Plaintiff's Motion, she has shown good
2 cause to amend the scheduling order. Plaintiff's counsel's
3 declaration indicates that he did not timely file this Motion
4 because he is the primary caregiver of a family member who has
5 faced various serious health issues for the last several months.
6 (See generally Hagan Decl.) Courts have found good cause when
7 long-term, serious health conditions impede a lawyer's ability to
8 timely file a motion. See Armitage v. Apex Control Sys., Inc., No.
9 2:08-CV-45-WTL-WGH, 2010 WL 4318846 (S.D. Ind. Oct. 26, 2010). The
10 result should be no different when the lawyer is the primary
11 caregiver to an ill loved one, instead of ill himself. Although
12 the Court's leniency should not be taken as an open invitation by
13 Plaintiff to neglect deadlines, the Court notes that the current
14 scheduling order was filed at the onset of counsel's family
15 member's condition, when he was less likely to know the amount of
16 time he would need to allocate to caregiving in the long-term. The
17 Court will expect promptness in the future.

18 Finally, CSU argues that granting the Motion would cause it
19 prejudice. However, prejudice to CSU is not of primary importance
20 to the Court's decision under a Rule 16 analysis. See Johnson, 975
21 F.2d 609. Regardless, prejudice is generally seen as minimal if
22 the party opposing leave has sufficient time for discovery. See
23 Polo v. Shwiff, 2013 U.S. Dist. LEXIS 60928, at *15-16.¹ Here,
24 discovery remains open, and Plaintiff's reply brief indicates that
25 she would not oppose extending discovery for CSU. (See Hagan Decl.
26 ¶ 28.)

27
28 ¹Reopening discovery, by contrast, may be prejudicial. See
 Coleman v. Quaker Oats Co., 232 F.3d 1271, 1295 (9th Cir. 2000).

1 **IV. Conclusion**

2 For the reasons stated herein, the Court GRANTS Plaintiff's
3 Motion. The Court notes that this Order only addresses good cause,
4 not whether Plaintiff's new Complaint will survive a motion to
5 dismiss. Accordingly, the Court need not reach Plaintiff's tolling
6 and administrative exhaustion arguments.

7 IT IS SO ORDERED.

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11 Dated: August 27, 2013



DEAN D. PREGERSON

United States District Judge